

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 664

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO HEALTH CARE; ENACTING THE UNLICENSED HEALTH CARE
PRACTICE ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Unlicensed Health Care Practice Act".

Section 2. DEFINITIONS.--As used in the Unlicensed Health
Care Practice Act:

A. "complementary and alternative health care
practitioner" means an individual who provides complementary
and alternative health care services;

B. "complementary and alternative health care
service" means the broad domain of complementary and
alternative healing methods and treatments including:

(1) acupressure;

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- 1 (2) anthroposophy;
- 2 (3) aromatherapy;
- 3 (4) ayurveda;
- 4 (5) bodywork, massage and massage therapy;
- 5 (6) craniosacral therapy;
- 6 (7) culturally traditional healing practices,
- 7 including practices by a curandera, sobadora, partera, medica
- 8 and arbolaira, and healing traditions, including plant
- 9 medicines and foods, prayer, ceremony and song;
- 10 (8) detoxification practices and therapies;
- 11 (9) energetic healing;
- 12 (10) folk practices;
- 13 (11) Gerson therapy and colostrum therapy;
- 14 (12) healing practices utilizing food, food
- 15 supplements, nutrients and the physical forces of heat, cold,
- 16 water, touch and light;
- 17 (13) healing touch;
- 18 (14) herbology or herbalism;
- 19 (15) homeopathy;
- 20 (16) meditation;
- 21 (17) mind-body healing practices;
- 22 (18) naturopathy;
- 23 (19) nondiagnostic iridology;
- 24 (20) noninvasive instrumentalities;
- 25 (21) polarity therapy; and

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1 (22) traditional oriental practices, such as
2 Qi Gong energy healing;

3 C. "controlled substance" means a drug or substance
4 listed in Schedules I through V of the Controlled Substances
5 Act or rules adopted pursuant to that act;

6 D. "conventional medical diagnosis" means a medical
7 term that is commonly used and understood in conventional
8 western medicine;

9 E. "dangerous drug" means a drug that is required
10 by an applicable federal or state law or rule to be dispensed
11 pursuant to a prescription; that is restricted to use by
12 licensed practitioners; or that is required by federal law to
13 be labeled with any of the following statements prior to being
14 dispensed or delivered:

15 (1) "Caution: federal law prohibits
16 dispensing without prescription.";

17 (2) "Caution: federal law restricts this drug
18 to use by or on the order of a licensed veterinarian."; or

19 (3) "Rx only";

20 F. "department" means the regulation and licensing
21 department;

22 G. "health care practitioner" means an individual
23 who provides health care services;

24 H. "health care service" means any service relating
25 to the physical and mental health and wellness of an

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1 individual; and

2 I. "sexual contact" means touching the primary
3 genital area, groin, anus, buttocks or breast of a patient or
4 allowing a patient to touch another's primary genital area,
5 groin, anus, buttocks or breast in a manner that is commonly
6 recognized as outside the scope of acceptable health care
7 practice and includes sexual intercourse, cunnilingus, fellatio
8 or anal intercourse, whether or not there is any emission, or
9 introducing any object into the genital or anal openings of
10 another in a manner that is commonly recognized as outside the
11 scope of acceptable health care practice.

12 Section 3. LICENSING EXEMPTION.--A complementary and
13 alternative health care practitioner who is not licensed,
14 certified or registered in New Mexico as a health care
15 practitioner shall not be in violation of any licensing law
16 relating to health care services pursuant to Chapter 61 NMSA
17 1978 unless that individual:

18 A. engages in any activity prohibited in Section 4
19 of the Unlicensed Health Care Practice Act; or

20 B. fails to fulfill the duties set forth in Section
21 5 of the Unlicensed Health Care Practice Act.

22 Section 4. PROHIBITED ACTS.--A complementary and
23 alternative health care practitioner shall not:

24 A. perform surgery on an individual;

25 B. set fractures on an individual;

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- 1 C. administer x-ray radiation to an individual;
- 2 D. prescribe or dispense dangerous drugs or
- 3 controlled substances to an individual;
- 4 E. directly manipulate the joints or spine of an
- 5 individual;
- 6 F. physically invade the body except for the use of
- 7 non-prescription topical creams, oils, salves, ointments,
- 8 tinctures or any other preparations that may penetrate the skin
- 9 without causing harm;
- 10 G. make a recommendation to discontinue current
- 11 medical treatment prescribed by a licensed health care
- 12 practitioner;
- 13 H. make a specific conventional medical diagnosis;
- 14 I. have sexual contact with a current patient or
- 15 former patient within one year of rendering service;
- 16 J. falsely advertise or provide false information
- 17 in documents described in Subsection A of Section 5 of the
- 18 Unlicensed Health Care Practice Act;
- 19 K. illegally use dangerous drugs or controlled
- 20 substances;
- 21 L. reveal confidential information of a patient
- 22 without the patient's written consent;
- 23 M. engage in fee splitting or kickbacks for
- 24 referrals; or
- 25 N. refer to the practitioner's self as a licensed

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1 doctor or physician or other occupational title pursuant to
2 Chapter 61 NMSA 1978.

3 Section 5. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE
4 PRACTITIONER--DUTIES.--A complementary and alternative health
5 care practitioner shall:

6 A. provide to a patient prior to rendering services
7 a patient information document, either in writing in plain
8 language that the patient understands or, if the patient cannot
9 read, orally in a language the patient understands, containing
10 the following:

11 (1) the complementary and alternative health
12 care practitioner's name, title and business address and
13 telephone number;

14 (2) a statement that the complementary and
15 alternative health care practitioner is not a health care
16 practitioner licensed by the state of New Mexico;

17 (3) a statement that the treatment to be
18 provided by the complementary and alternative health care
19 practitioner is complementary or alternative to health care
20 services provided by health care practitioners licensed by the
21 state of New Mexico;

22 (4) the nature and expected results of the
23 complementary and alternative health care services to be
24 provided;

25 (5) the complementary and alternative health

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1 care practitioner's degrees, education, training, experience or
2 other qualifications regarding the complementary and
3 alternative health care services to be provided;

4 (6) the complementary and alternative health
5 care practitioner's fees per unit of service and method of
6 billing for such fees and a statement that the patient has a
7 right to reasonable notice of changes in complementary and
8 alternative health care services or charges for complementary
9 and alternative health care services;

10 (7) a notice that the patient has a right to
11 complete and current information concerning the complementary
12 and alternative health care practitioner's assessment and
13 recommended complementary and alternative health care services
14 that are to be provided, including the expected duration of the
15 complementary and alternative health care services to be
16 provided and the patient's right to be allowed access to the
17 patient's records and written information from the patient's
18 records;

19 (8) a statement that patient records and
20 transactions with the complementary and alternative health care
21 practitioner are confidential unless the release of these
22 records is authorized in writing by the patient or otherwise
23 provided by law;

24 (9) a statement that the patient has a right
25 to coordinated transfer when there will be a change in the

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1 provider of complementary and alternative health care services;
2 and

3 (10) the name, address and telephone number of
4 the department and notice that a patient may file complaints
5 with the department; and

6 B. obtain a written acknowledgment from a patient,
7 or if the patient cannot write an oral acknowledgment witnessed
8 by a third party, stating that the patient has been provided
9 with a copy of the information document. The patient shall be
10 provided with a copy of the written acknowledgment, which shall
11 be maintained for three years by the complementary and
12 alternative health care practitioner providing the
13 complementary and alternative health care service.

14 Section 6. APPLICABILITY.--The following individuals
15 shall not provide complementary and alternative health care
16 services pursuant to the Unlicensed Health Care Practice Act:

17 A. former health care practitioners whose license,
18 certification or registration has been revoked or suspended by
19 any health care board and not reinstated;

20 B. individuals convicted of a felony for a crime
21 against a person who have not satisfied the terms of the
22 person's sentence as provided by law;

23 C. individuals convicted of a felony related to
24 health care who have not satisfied the terms of the person's
25 sentence as provided by law; and

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1 D. individuals who have been deemed mentally
2 incompetent by a court of law.

3 Section 7. DISCIPLINARY ACTIONS.--If the department
4 determines that a complementary and alternative health care
5 practitioner practicing pursuant to the Unlicensed Health Care
6 Practice Act may have violated a provision of that act, it may
7 take one or more of the following actions pursuant to the
8 Uniform Licensing Act against the complementary and alternative
9 health care practitioner if that practitioner is found to have
10 violated a provision of the Unlicensed Health Care Practice
11 Act:

12 A. provide written notice to the complementary and
13 alternative health care practitioner requesting the
14 practitioner to correct the activity that is a violation of the
15 Unlicensed Health Care Practice Act; this action shall be the
16 first option if the offense is a violation of the disclosure
17 requirements of the Unlicensed Health Care Practice Act;

18 B. issue a cease and desist order against the
19 complementary and alternative health care practitioner
20 pertaining to the provision of complementary and alternative
21 health care services that are not in compliance with the
22 provisions of the Unlicensed Health Care Practitioner Act; or

23 C. impose a civil penalty in an amount not to
24 exceed ten thousand dollars (\$10,000) for each violation.

25 Section 8. DUTIES OF THE SUPERINTENDENT.--The

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1 superintendent of regulation and licensing is expressly
2 authorized to promulgate rules as necessary to implement the
3 provisions of the Unlicensed Health Care Practice Act.

4 Section 9. SEVERABILITY.--If any part or application of
5 this act is held invalid, the remainder or its application to
6 other situations or persons shall not be affected.

7 Section 10. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2009.